

A F T E R N O O N S E S S I O N

2:07 P.M.

(In robing room)

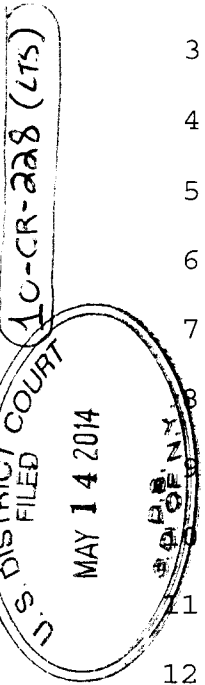
THE COURT: Afternoon, everyone. So we're ready to begin and now, Mr. Krantz, were you requesting that this be a sealed record, or do you just not want to be in front of the witness?

MR. KRANTZ: Does not need to be a sealed record.

THE COURT: Okay. Thank you.

MR. KRANTZ: Your Honor, I just wanted to call something to the Court's attention which concerns us. It's a little bit of a day of accusations. We're not looking to belabor things, but from what I understand, during one of the recent breaks, Agent Takla, who was in the stairwell with Kimberly Yuhas of my firm, had a confrontation with her which we view as inappropriate, which is to the effect of -- she was holding the door for him, and it was just the two of them. And in a confrontational manner, he said to her words to the effect: The next time that your client's wife is in the courtroom, she should not hug Mr. O'Hara when the jury can see it. Something to the effect of: That's improper.

I was not there, but Ms. Yuhas can speak for herself. I'm told it was said in a hostile manner. I think it was probably in some reaction to the comment that Mr. Mehler made about someone nodding a head. Maybe that's what led to a



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1 little loss of temper, but I do think it's just not appropriate
2 for an FBI agent to confront an associate of our firm in the
3 hallway, in the stairwell, about a legal concern. That should
4 be done through proper channels.

5 He should tell the AUSAs. The AUSAs can tell the
6 Court, if they wish. I have no knowledge of the incident he's
7 referring to about a hug. I don't know what he's talking
8 about. I don't know whether it occurred or it didn't occur.
9 It was news to me, but that's not an appropriate way to deal
10 with the problem, and I think it was quite upsetting; so I
11 think we should put it on the record.

12 MR. JACKSON: May I respond, your Honor?

13 THE COURT: Yes, Mr. Jackson.

14 MR. JACKSON: First, your Honor, as an initial matter,
15 the government certainly wish that there hadn't been any
16 offense taken at any comment. We hope that everyone is all
17 right. I hope that no one's tone was inappropriate. I wasn't
18 there for that.

19 I disagree completely with Mr. Krantz's suggestion
20 that it's improper for a member of the prosecution team to tell
21 one of the members of the defense team -- and Ms. Yuhas is an
22 attorney, she's an attorney representing a client in this
23 case -- about activity in the courtroom that he perceives is
24 improper. There's nothing in this allegation that suggested
25 that he engaged in any improper activity.

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1 It's been a normal part of this trial for attorneys
2 and other members of the prosecution and defense team to
3 regularly communicate with each other. A number of the defense
4 team people here have communicated regularly with Ms. Baskin,
5 the paralegal specialist. That's normal.

6 THE COURT: To reprimand her for perceived
7 improprieties?

8 MR. JACKSON: Well, your Honor, to instruct them about
9 what they thought was improper. I think that there have been
10 members of the defense team who have stated to Ms. Baskin,
11 asking her to take things down, reminding her about
12 highlighting of things in connection with what your Honor said.

13 And, your Honor, I want to raise a concern here, okay?
14 We have not, as a prosecution team, felt a need to raise every
15 single thing that occurs in this case with your Honor. There
16 are many things that don't need to be raised with the Court. I
17 think it was appropriate for Agent Takla to point out to a
18 member of the defense team, since we're talking about things
19 that I think are quite petty and based on nothing, to talk
20 about something which is highly improper which a number of the
21 FBI agents raised with me, but I chose not to -- I didn't want
22 to embarrass or make anyone uncomfortable and chose not to
23 bring it up with the judge because I thought that defense
24 counsel would recognize --

25 THE COURT: Out with it. Out with it.

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1 MR. JACKSON: It's the fact that one of the -- what
2 the FBI agents observed was that on at least one, and I think
3 they mentioned multiple occasions, when we came into the robing
4 room to discuss objections, there was interaction between the
5 family members of certain of the defense team and the
6 defendants at the table, which seemed designed perhaps to
7 elicit sympathy, but whatever the case may be, it was not
8 appropriate court conduct.

9 The specific incident that I think disturbed the FBI
10 agents, that Agent Takla was talking about, was apparently
11 Mr. Perez's wife, while we were in the robing room, coming to
12 the front of the courtroom, planting a kiss on the cheek of
13 Mr. O'Hara, generally demonstrating some sort of, like,
14 support, et cetera, in the presence of the jury.

15 And I think that the FBI agent's appropriately thought
16 that that was improper while court was in session, that it
17 could be misinterpreted or confused by the jury, and that it
18 should be reserved for when the jury is not in the courtroom.
19 And I think he raised that concern with a member of the defense
20 team. There's nothing improper in that, and we object to any
21 suggestion otherwise.

22 MR. KRANTZ: Your Honor, could I briefly respond to
23 that?

24 THE COURT: Very briefly.

25 MR. KRANTZ: If that occurred, and I have no idea if

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1 it did, I would have no problem with telling Mr. Perez's wife
2 that when we're in the robing room, of course, there should be
3 no interaction with any defendant. That's self-evident.

4 If anyone from the prosecution team had asked me about
5 it, I would do that. If they said it to the Court, I would do
6 that. But it occurred two weeks ago, and to confront
7 aggressively Miss Yuhas in a stairwell about it is not
8 appropriate, and I couldn't disagree more with Mr. Jackson.
9 There's a way to do things here. Ms. Yuhas has never spoken to
10 Agent Takla for this entire trial. I think it's fairly
11 obvious, with all due respect to Ms. Yuhas, that I'm lead
12 counsel for Mr. Perez, and it seems very strange to do that.

13 THE COURT: All right. First, quite literally,
14 everybody in this room is going to take ten deep breaths, and
15 then I'll speak. Thank you. We're getting toward the end of
16 what has been a very challenging, very long and very stressful
17 in ways that are appropriate because it's serious and important
18 and, indeed, historic in its length and complexity trial. And
19 I think we would all do well, at this point, to default to
20 formality as opposed to informality, and default in
21 communications and raising issues lead counsel to lead counsel
22 and/or lead counsel to Court.

23 And if there is something that anyone on a team is,
24 you know, terribly upset about or thinks is inappropriate, it
25 would be best for that person to process it with their lead

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1 counsel before raising it with anyone else. And it would be
2 helpful that things not come from left field for anybody at any
3 time.

4 When I say that court is in session and everyone is to
5 remain quietly, I mean that. I mean everyone. And as you
6 know, I started saying that when, early on, in a couple of
7 pauses we had what I think I characterized as coffee klatch
8 activity. And today I noticed that with the visiting
9 delegation, who seemed to be into playing musical chairs and
10 walking in and out all the time, when I walked out of the room
11 for a minute, I came back and there were people all over the
12 place. There were people from in front of the bar, some back
13 there with them. There was talking going on, and I said:
14 We're in session. Everybody be quiet.

15 So everybody talk to your clients, talk to your teams.
16 When the jury is in the courtroom, other than to go back and
17 forth to the bathroom, let's have no crossing of the bar of the
18 well and nobody chatting or relaxing with anyone except insofar
19 as it has to do with the case and it's among counsel and
20 clients. And that level of formality is important for the
21 jury, who otherwise sit there awkwardly like, you know, half
22 spectators of the coffee klatch to which they're not invited,
23 and it's appropriate for the dignity of the courtroom.

24 And if there ever is a conduct issue that can't be
25 resolved politely and civilly among counsel, you know, bring it

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1 to me in the robing room. But let's just do that, and
2 everybody give people the benefit of the doubt on goodwill.
3 Thicken up your skin, be formal, and we'll all get through
4 this, and continue to get through it at the high level of legal
5 work and thought and dignity that we've been able to maintain
6 so far.

7 MR. KRANTZ: Thank you, your Honor.

8 MR. MEHLER: Your Honor, I don't disagree with
9 anything the Court has said, and I'm not making a complaint but
10 rather a slight confession that I -- my informant got the wrong
11 prosecutor this morning, and I was wrong about that. And I
12 apologize to Mr. Schwartz. I will not give up the other
13 prosecutor and the conduct ended, and I never claimed
14 intentionality, but I did want to put that on the record.

15 THE COURT: Thank you.

16 MR. JACKSON: Your Honor, before we --

17 THE COURT: Yes, Mr. Jackson?

18 MR. JACKSON: Just based on the nature of the
19 conversation, we would ask the Court if this proceeding could
20 be temporarily sealed until the conclusion of the trial. I
21 think that it does not relate to the actual issues at play in
22 the trial, and I would not like any undue concern about these
23 matters to somehow improperly influence the case otherwise. So
24 we'd request temporary sealing of this record.

25 THE COURT: Is there any objection?

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1 MR. KRANTZ: I have no objection.

2 MR. MEHLER: No objection.

3 MR. RIOPELLE: No objection.

4 MR. BRESLIN: No objection.

5 THE COURT: The request is granted. This particular
6 conference is sealed until after the trial has ended and the
7 verdict has been received in order to avoid distraction.

8 MR. RIOPELLE: Thank you, Judge.

9 THE COURT: And Ms. Courtney will keep track of that
10 communication. Mr. Breslin?

11 MR. BRESLIN: Your Honor does seem to have sort of a
12 regular flow of guests coming in, and while the lawyers this
13 morning were especially aggressive in sort of asking questions,
14 and I want not to speak to them and be perceived as rude to
15 your Honor's guests and people who were here from another
16 country, perhaps some guidance as to what the Court's
17 preference would be for the people that come in here to observe
18 a portion of the trial and routinely at breaks will approach
19 counsel, as we take our biology breaks, with questions or
20 points of clarification.

21 THE COURT: When the jury is in the room, the response
22 should be: Judge considers court in session. I can't have a
23 conversation.

24 MR. BRESLIN: Understood.

25 THE COURT: When the jury is not in the room, it's

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1 whatever your comfortable with, as long as it's not scandalous
2 and in violation of a local rule.

3 MR. RIOPELLE: That leaves me out.

4 MR. BRESLIN: I was this close to getting away.

5 THE COURT: And just so you know, I can't --

6 MR. BRESLIN: Well, but it's your courtroom.

7 THE COURT: We're the biggest ongoing show in town,
8 and so when there are visiting delegations --

9 MR. RIOPELLE: That is a sad commentary.

10 THE COURT: -- of 60 judges from Israel --

11 MR. BRESLIN: They were from the Supreme Court
12 Israeli.

13 THE COURT: Is it like the Supreme Court like here?

14 MR. BRESLIN: No, they said, like, the Israeli --
15 there's a justice here from The Supreme Court.

16 THE COURT: Yes. So that's not inconsistent with my
17 understanding that there were 60 Israeli judges. All right.
18 In any event, it's something that we do, and we are an example
19 of American justice at, as close as we can get to, the finest.
20 And so you just bear that in mind in our personal conduct and
21 interactions with them and what we have on our computer screens
22 where they can see and all of that.

23 MR. RIOPELLE: That was me. Mea culpa.

24 THE COURT: So sometimes I get five minutes warning of
25 this, sometimes a little bit more, but when the jury are in the

1 room, just everybody be quiet and that is best. All right?

2 MR. BRESLIN: Okay.

3 MR. KRANTZ: Will do.

4 (Continued on next page)

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